

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PERRY E. FLANYAK,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO 07-14J
) Chief Judge Ambrose
) Magistrate Judge Caiazza
C.O. SAMBRONSKI, et al.,)
)
Defendants.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

Because the Plaintiff, Perry E. Flanyak, has failed to sign an authorization which would allow the institutional account officer to deduct a partial filing fee, it is respectfully recommended that this action be dismissed, without prejudice. The Plaintiff should be permitted to re-file this action within the applicable statute of limitations period by paying the full filing fee of \$350.00.

II. REPORT

The Plaintiff, Perry E. Flanyak, ("the Plaintiff" or "Flanyak"), an inmate confined under judgment of sentence at the State Correctional Institution at Mahanoy, Frackville, Pennsylvania, filed this lawsuit pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983. Together with the Complaint, Flanyak filed an application for leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996 ("the Act"), 28 U.S.C. §1915(b), as amended on April 26, 1996, requires that prisoners who cannot pay the full filing fee immediately, submit an initial partial filing fee and the balance in installment payments. Consistent with the relevant terms of the Act, the court entered an Order (Doc.7) on March 22, 2007, that did the following:

1. Computed the proper initial partial filing fee and informed the plaintiff of that amount;
2. Directed the plaintiff to either:
 - a. sign an authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into the court; or
 - b. sign a form indicating that, whether for financial reasons or otherwise, he chose to withdraw the action;
3. Instructed the Plaintiff to return the signed authorization or notice of withdrawal within twenty days.

Flanyak has not returned a signed notice of the withdrawal of this action. Neither has he submitted a signed authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into court. Because the court will not direct the prison to remove money from the Plaintiff's institutional account and pay it into the court until Flanyak authorizes a withdrawal, the initial partial filing fee in this case will never be paid.

The Plaintiff's refusal to comply with the directions specifically set out in the court's March 22, 2007 Order makes it impossible for the court to comply with Congress' amendments to the law regulating the manner in which in forma pauperis prison litigation is to be administered. Because Flanyak has not complied with this court's Order, it must be concluded that he no longer intends to maintain this action.

It is respectfully recommended that Flanyak's application to proceed in forma pauperis be denied, and that this action be dismissed, without prejudice. The Plaintiff should be permitted to re-file this action within the applicable statute of limitations period by paying the full filing fee of \$350.00.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b) (1) (B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by May 21, 2007.

May 3, 2007

s/Francis X. Caiazza
FRANCIS X. CAIAZZA
UNITED STATE MAGISTRATE JUDGE

CC:

PERRY E. FLANYAK, DM-9231
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